

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

GARY L SHULTZ,

Plaintiff,

WISCONSIN COLLABORATIVE
INSURANCE COMPANY,

Involuntary Plaintiff,

Case No. 20-cv-0564-bhl

v.

CARDINAL HEALTH INC, et al.,

Defendants,

ORDER

On September 3, 2020, plaintiff Gary Shultz filed an amended complaint against defendants Cardinal Health, Inc. and Cardinal Health 200, LLC (collectively “Cardinal Health”) and OSARTIS GmbH (“OSARTIS”). (ECF No. 19.) Cardinal Health has answered the amended complaint and OSARTIS has moved to dismiss the claims against it for lack of personal jurisdiction. (ECF Nos. 23 & 26.) Briefing on OSARTIS’s motion to dismiss appeared to be complete several weeks ago. Plaintiff filed its response brief on December 22, 2020, and OSARTIS filed its reply brief on January 5, 2021. (ECF Nos. 38 & 40.)

Since the filing of OSARTIS’s reply brief, the parties have made several additional filings. On January 6, 2021, Plaintiff and Cardinal Health filed a joint motion for a protective order. (ECF No. 41.) Then, on January 12, 2021, Plaintiff filed a motion for leave to file a Supplemental Memorandum in opposition to OSARTIS’s motion to dismiss, along with a motion for leave to file supporting documents under seal. (ECF Nos. 42 & 43.) Through these filings, Plaintiff asked to supplement the motion to dismiss record with sales information produced and marked “Confidential” by Cardinal. According to Plaintiff, Cardinal only produced this information after briefing on the motion to dismiss was completed. Plaintiff argues that this information is relevant to the existence of personal jurisdiction over OSARTIS. OSARTIS has filed a brief opposing Plaintiff’s effort to file a Supplemental Memorandum, largely on untimeliness grounds. (ECF No. 45.)

The Court first finds that good cause exists for the entry of the requested protective order. Plaintiff and Cardinal have adequately shown their need for a protective order to facilitate the exchange of confidential commercial information, including sales data, in discovery. The Court will therefore grant the motion for a protective order.

Without ruling on relevance, the Court also finds good cause sufficient to grant Plaintiff's motions to file documents under seal and to file a Supplemental Memorandum. The Court is satisfied that the proffered sales data was not available at the time of Plaintiff's earlier briefing and that the confidentiality concerns asserted are sufficient to warrant sealing the attachment under the now-approved protective order. Given the timing, the Court will, however, allow OSARTIS 14 days from the date of this Order to file an Amended Reply in support of its motion to dismiss. OSARTIS should limit any new arguments to those necessary to address the new material in Plaintiff's Supplemental Memorandum. The Court will also grant OSARTIS' motion to modify its response to Plaintiff's motion to file *a Supplemental Memorandum*. Accordingly,

IT IS HEREBY ORDERED that the motion for a protective order, (ECF No. 41), is **GRANTED**. The proposed protective order, (ECF No. 41-1), is approved as filed.

IT IS FURTHER ORDERED that plaintiff's motion for leave to file documents under seal, (ECF No. 43), is **GRANTED**. Plaintiff's exhibit, (ECF No. 43-1), shall remain under seal.

IT IS FURTHER ORDERED that OSARTIS' motion to modify, (ECF No. 46), is **GRANTED** and OSARTIS's first amended response, (ECF No. 46-1), is to be filed by the Clerk as a replacement to ECF No. 45.

IT IS FURTHER ORDERED that plaintiff's motion for leave to file *a Supplemental Memorandum in Support of Plaintiff's Response in Opposition to Defendant OSARTIS' Motion to Dismiss for Lack of Personal Jurisdiction*, (ECF No. 42), is **GRANTED**. Plaintiff's proposed supplemental memorandum, (ECF No. 42-1), is to be filed by the Clerk on the docket. Defendant OSARTIS may file an amended reply in support of its motion to dismiss addressing plaintiff's supplemental memorandum on or before **March 9, 2021**.

Dated at Milwaukee, Wisconsin on February 23, 2021.

s/ Brett H. Ludwig

BRETT H. LUDWIG

United States District Judge